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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No.	NC-16-1421-BJuF
6	LEAH AHN,	)	Bk. No.	14-30874-HLB
7	Debtor.	)		
8	_____	)		
9	LEAH AHN,	)		
10	Appellant,	)		
11	v.	)	<b>MEMORANDUM<sup>1</sup></b>	
12	PRIYA SANGER; MICHAEL SANGER;	)		
13	PAUL UTRECHT; STEPHEN DAVIS	)		
14	FINESTONE,	)		
	Appellees.	)		
	_____	)		

Argued and Submitted on June 22, 2017,  
at San Francisco, California

Filed - November 2, 2017

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Honorable Hannah L. Blumenstiel, Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
Appellant Leah Ahn argued pro se; Stephen Davis  
Finestone argued pro se and for appellees Priya  
Sanger, Michael Sanger, and Paul Utrecht.

Before: BRAND, JURY and FARIS, Bankruptcy Judges.

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<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have, it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Debtor Leah Ahn appeals an order denying her motion for  
2 contempt for appellees' alleged violation of the discharge  
3 injunction. The bankruptcy court determined that appellees' post-  
4 discharge actions were merely acts to preserve their in rem rights  
5 in Ahn's real property and therefore did not violate the discharge  
6 injunction. We AFFIRM.

## 7 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### 8 A. Prepetition events

#### 9 1. Transactions related to the subject property

10 In 2003, as tenants in common ("TIC") with Trystan Christ and  
11 Robert Kaplan, Priya and Michael Sanger acquired an interest in  
12 847-849-851 Lombard Street, a three-unit residential building in  
13 San Francisco (the "Property"). The Sangers currently own unit  
14 849; Christ owned unit 851; Kaplan owned unit 847.<sup>2</sup> All three  
15 units are subject to a single mortgage (the "Shared Mortgage").

16 The original cotenants executed a Tenancy in Common Agreement  
17 ("TIC Agreement"). The TIC Agreement governed the cotenants'  
18 rights and obligations with respect to the Property. Under the  
19 TIC Agreement, each cotenant agreed to pay a certain percentage of  
20 the Shared Mortgage, depending on their respective share of the  
21 debt. If one tenant did not pay his or her share of the Shared  
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23 <sup>2</sup> Under California law, co-owners of real property holding  
24 undivided interests, such as tenants in common, are considered  
25 "cotenants." In re Fazzio, 180 B.R. 263, 268 (Bankr. E.D. Cal.  
26 1995); Harry D. Miller & Marvin B. Starr, California Real Estate  
27 § 11.1 (4th ed. 2017) ("Miller & Starr"). While tenants in common  
28 generally each have an equal right to occupy the property, tenants  
in common in multi-unit residential buildings may agree to give  
each owner an exclusive right of occupancy in particular dwelling  
units pursuant to which each may respectively exclude the others  
from their private residential unit. Tom v. City & Cty. of S.F.,  
120 Cal. App. 4th 674, 676 (2004).

1 Mortgage, the other cotenants were required to pay the non-paying  
2 tenant's share, plus their own share.

3 In late 2004, Ahn acquired Christ's interest in unit 851.  
4 Ahn, Kaplan and the Sangers then entered into an Amended TIC  
5 Agreement for the Property, which contained the same pertinent  
6 provisions as the original TIC Agreement.

7 In 2007, Kaplan sold his interest in unit 847 to a Ms. Baker  
8 for cash; Ahn and the Sangers received cash distributions from the  
9 sale proceeds. After the sale to Baker, Ahn's shared debt  
10 percentage was 25.765%; the Sangers' share was 74.23%. Baker was  
11 not responsible for the Shared Mortgage payments.

12 Ahn paid her share of the Shared Mortgage payments through  
13 and including April 2011, but failed to make any payments  
14 thereafter. To avoid default and foreclosure, the Sangers made  
15 several months of mortgage payments on Ahn's behalf.

## 16 **2. The arbitration proceeding**

17 The Sangers initiated a JAMS<sup>3</sup> arbitration proceeding against  
18 Ahn, alleging that she had failed to pay her share of the Shared  
19 Mortgage payments since May 2011.

20 In the Arbitration Award, the arbitrator found that, by  
21 signing the Amended TIC Agreement, Ahn assumed all of the duties  
22 and obligations of Christ under the TIC Agreement, including his  
23 obligation to pay his share of the Shared Mortgage, and agreed to  
24 be bound by all of its terms and conditions. For Ahn's failure to  
25 pay her share of the Shared Mortgage as required by Section 4.2 of

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26  
27 <sup>3</sup> JAMS, formerly known as Judicial Arbitration and Mediation  
28 Services, Inc., provides alternative dispute resolution services,  
including mediation and arbitration.

1 the Amended TIC Agreement, the arbitrator found that the Sangers  
2 were entitled to recover \$9,136.26 for the Shared Mortgage  
3 payments they made for Ahn and \$58,369.29 for their reasonable  
4 attorney's fees and costs. The arbitrator further ordered that  
5 Ahn "hereafter timely pay the portion of the mortgage that is  
6 required of her on a monthly basis."

7 **3. The Judgment**

8 By order, the state court confirmed the Arbitration Award.  
9 The court's corresponding judgment (the "Judgment") awarded the  
10 Sangers \$68,656.07 plus an additional \$4,214.50 in attorney's fees  
11 and costs and ordered Ahn to "perform all of the acts required by  
12 the [Arbitration Award]." In short, Ahn had to repay the Sangers  
13 for the Shared Mortgage payments they made on her behalf and their  
14 attorney's fees and costs to date and pay her share of the Shared  
15 Mortgage payments going forward. The Sangers recorded an Abstract  
16 of Judgment for \$72,870.57.

17 Over the next two years, Ahn's many attempts to challenge the  
18 Judgment and to avoid paying her share of the Shared Mortgage  
19 payments were unsuccessful. Ultimately, the Sangers obtained an  
20 order to sell Ahn's unit. A sheriff's sale was set for June 10,  
21 2014. The state court denied Ahn's motion to quash the sale  
22 order. Ahn appealed and filed a petition for writ of supersedeas  
23 to stay the sale. The California Court of Appeal denied the  
24 petition.

25 Meanwhile, in March 2014, the Judgment was amended to include  
26 an additional \$7,290.90 the Sangers paid for Ahn's share of the  
27 Shared Mortgage payments from July 2013 through December 2013.

28 ////

1           **4. Sangers' prepetition actions for attorney's fees**

2           The Sangers later moved to recover post-judgment attorney's  
3 fees and costs of \$35,074.40 incurred for enforcing the Judgment  
4 against Ahn. The state court orally denied that request on the  
5 basis that neither the Judgment nor the Arbitration Award  
6 expressly provided for post-judgment fees. Before an order was  
7 entered denying the fee request, the Sangers moved to amend the  
8 Judgment nunc pro tunc to add language authorizing them to recover  
9 their post-judgment fees and costs and moved for reconsideration  
10 of the denial of post-judgment fees. Those matters were taken off  
11 calendar once Ahn filed for bankruptcy; all appellate matters were  
12 stayed.

13           **B. Postpetition events**

14           Ahn filed a chapter 7<sup>4</sup> bankruptcy case on June 9, 2014, the  
15 day before the scheduled sheriff's sale of the Property. Ahn  
16 received a discharge on September 16, 2014, and the case was  
17 closed.<sup>5</sup>

18           **1. Acts and proceedings after discharge**

19           Ahn's bankruptcy case was reopened in April 2015. In May  
20 2015, Ahn returned to the state court and filed an Ex Parte  
21

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22           <sup>4</sup> Unless specified otherwise, all chapter, code and rule  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
24 the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

25           <sup>5</sup> Around this same time, Ahn filed a new action in state  
26 court against the Sangers and the mortgage lender, alleging they  
27 had conspired to defraud her. The Sangers contend this same fraud  
28 claim was already dismissed in January 2012. Ahn also sought a  
determination that she owes nothing on the Shared Mortgage. The  
state court ordered Ahn's claims in the new action against the  
Sangers to arbitration based on the Amended TIC Agreement; Ahn's  
claims against the other defendants are proceeding in state court.

1 Application for an Order Shortening Time on Motion to Confirm  
2 Payment of Arbitration Award. The state court initially denied  
3 her application for failure to receive notice that the automatic  
4 stay was no longer in effect. Once Ahn filed a Notice of  
5 Termination of Bankruptcy Stay, on June 1, 2015, she filed a  
6 Motion to Fix Amount Due on the Arbitration Award, Confirm Payment  
7 of Award Under Protest, and Suspend Writ of Execution and Release  
8 Liens.

9 On June 5, 2015, the Sangers filed in the state court  
10 "renewed" motions to: (1) amend the Judgment (a second time) to  
11 add subsequent Shared Mortgage payments (plus late fees and  
12 interest) totaling \$25,559.46 that the Sangers paid for Ahn from  
13 January 2014 to May 2015 and post-judgment collection attorney's  
14 fees and costs; (2) reconsider the denial of post-judgment  
15 collection attorney's fees and costs; and (3) amend the Judgment  
16 nunc pro tunc to correct the clerical error omitting the award of  
17 post-judgment fees and costs. For their three-year effort to  
18 enforce and collect on the Judgment, the Sangers sought an  
19 additional \$66,408.78 in post-judgment fees and costs.

20 After a hearing on the parties' motions, the state court  
21 issued orders: (1) granting the Sangers' motion to add the  
22 additional unpaid Shared Mortgage payments to the Judgment;  
23 (2) denying the Sangers' request for post-judgment attorney's fees  
24 and reconsideration of the earlier order; (3) denying the nunc pro  
25 tunc motion; and (4) fixing the amount due on the Judgment. The  
26 final Judgment was \$105,720.93, plus interest of 10% per annum.  
27 The Sangers appealed the orders denying their post-judgment  
28 attorney's fees and costs and their motion to amend the Judgment

1 nunc pro tunc.

2 On July 17 and September 4, 2015, Ahn made two Judgment  
3 payments to the Sangers for \$131,098.05 and \$3,551.19,  
4 respectively. No one has explained why she paid those precise  
5 amounts. In response, the Sangers filed two Acknowledgments of  
6 Partial Satisfaction of Judgment. Ahn demanded that the Sangers  
7 file a full satisfaction of judgment based on her two payments.  
8 Apparently, the parties disputed the amount owed under the  
9 Judgment.

10 In September 2015, Ahn started making semi-regular payments  
11 of her share of the Shared Mortgage. However, those payments  
12 stopped again in August 2016.

13 In March 2016, counsel for the Sangers sent Ahn a Notice of  
14 Actionable Violation ("NAV"), informing Ahn that by encumbering  
15 her ownership interest in the Property and recording a deed of  
16 trust against the Property (in favor of Ahn's mother), she had  
17 violated the Amended TIC Agreement.

18 In June 2016, the California Court of Appeal reversed the  
19 trial court's denial of the Sangers' post-judgment attorney's fees  
20 and costs and remanded for a determination of reasonable fees.  
21 Ahn's petition for review was denied. On remand, the Sangers  
22 sought a total of \$139,200 in post-judgment attorney's fees and  
23 costs.

24 Between August and October 2016, the Sangers sent emails to  
25 Ahn notifying her of past due Shared Mortgage payments and  
26 requesting that she pay them "asap."

27 **2. Ahn's motion for contempt**

28 Ahn thereafter filed a motion for contempt against the

1 Sangers and their counsel for their alleged violations of the  
2 discharge injunction ("Contempt Motion").<sup>6</sup> In addition to  
3 punitive damages of \$439,205.22, attorney's fees and costs, Ahn  
4 sought to recover all payments she made to the Sangers from July  
5 2015 through July 2016, which consisted of the two Judgment  
6 payments and ten Shared Mortgage payments she made thereafter.

7 Ahn contended that the Sangers violated the discharge  
8 injunction with their July 2015 motions to amend the Judgment to  
9 include her unpaid Shared Mortgage payments plus interest and to  
10 award post-judgment attorney's fees, and by coercing her into  
11 paying the Shared Mortgage payments between July 2015 and July  
12 2016 to avoid the Sangers foreclosing their lien. Ahn maintained  
13 that any post-discharge debts for her unpaid share of the Shared  
14 Mortgage payments and the Sangers' attorney's fees were  
15 discharged; therefore, prosecuting them violated the discharge  
16 injunction.

17 In opposition, the Sangers contended that all of the post-  
18 discharge acts about which Ahn complained were either acts in  
19 furtherance of their lien (in rem) rights in Ahn's interest in the  
20 Property, which were not discharged in bankruptcy, or acts to  
21 collect Ahn's postpetition share of the Shared Mortgage payments,  
22 her obligation for which was also not discharged in bankruptcy.  
23 Thus, any of their efforts to collect the Shared Mortgage payments  
24 from Ahn, including their emails requesting mortgage payments, did  
25 not violate the discharge injunction.

26 The Sangers disputed Ahn's contentions that she was not

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27  
28 <sup>6</sup> For purposes of the Contempt Motion, we refer to the  
Sangers and their counsel collectively as Sangers.



1 liable for the Shared Mortgage or that any such liability was  
2 discharged. The state court had determined that Ahn was liable  
3 for the Shared Mortgage. Further, even if the Amended TIC  
4 Agreement was an executory contract that was rejected by Ahn's  
5 bankruptcy estate for failure to assume it, the Sangers argued  
6 that such rejection was merely a breach of the Agreement, not a  
7 termination of it. Therefore, Ahn's obligations under it remained  
8 unaltered.

9 As for post-judgment attorney's fees, the Sangers argued that  
10 Ahn cited no authority for the proposition that post-judgment  
11 collection costs (including attorney's fees) with respect to a  
12 prepetition secured judgment are discharged in a bankruptcy case,  
13 especially when the debtor/judgment creditor "returns to the fray"  
14 and continues attacking the judgment. In any event, the Sangers  
15 maintained that they never sought to collect attorney's fees as a  
16 personal liability of Ahn.

17 Finally, for the two Judgment payments Ahn made, the Sangers  
18 contended that those were payments on a secured debt for which  
19 Ahn's property remained liable under the Amended TIC Agreement,  
20 California law and the Judgment. The Sangers argued that Ahn made  
21 those payments voluntarily to avoid having them exercise their in  
22 rem rights.

### 23 **3. Ruling on the Contempt Motion**

24 The bankruptcy court began the Contempt Motion hearing by  
25 announcing its tentative ruling in favor of the Sangers. The  
26 court found that Ahn's obligation to pay her share of the Shared  
27 Mortgage payments on an ongoing basis was secured by the recorded  
28 Abstract of Judgment and that the Sangers' efforts respecting the

1 Judgment were only to preserve their in rem rights; thus, they did  
2 not violate the discharge injunction.

3       The court also found that, irrespective of the Judgment, Ahn  
4 was obligated to pay her share of the Shared Mortgage under the  
5 Amended TIC Agreement, which requires tenants in common to make  
6 mortgage payments and imposes late fees and interest on the non-  
7 paying cotenant for failure to comply. Ahn's failure to assume  
8 the Amended TIC Agreement in her bankruptcy case caused only a  
9 breach of that Agreement; it did not terminate it. The court  
10 found that, because Ahn's obligations under the Amended TIC  
11 Agreement "ran with the land," the Sangers had not violated the  
12 discharge injunction by sending Ahn the NAV, notifying her of her  
13 breach of the covenant not to encumber the Property without  
14 consent of the cotenants.

15       Regarding the Sangers' post-discharge appellate litigation to  
16 include attorney's fees and costs in the Judgment, the court found  
17 that, based on the appellate court decision, such fees and costs  
18 should have been part of the original Judgment in 2012 as a matter  
19 of law. This meant that the Sangers' attorney's fees and costs  
20 became an obligation that was secured by the Abstract of Judgment  
21 and that survived the discharge. Therefore, the Sangers' efforts  
22 to obtain the appellate decision did not violate the discharge  
23 injunction.

24       After hearing argument from the parties, the court entered  
25 its final ruling, finding that the Sangers' post-discharge actions  
26 were merely acts to preserve the in rem rights that California  
27 law, the Judgment, and the Amended TIC Agreement gave them with  
28 respect to the Property. The court found that any payments Ahn

1 made on account of the in rem liability were voluntary. And while  
2 she made those payments personally, the court opined that Ahn  
3 could have refused to make them and allowed Sangers to foreclose  
4 her interest, which would not have violated the discharge  
5 injunction.

6 Ahn timely appealed the bankruptcy court's order denying the  
7 Contempt Motion entered on November 17, 2016 ("Contempt Order").

8 **C. Post-appeal events**

9 While the Contempt Motion was pending, Ahn filed an adversary  
10 proceeding against the Sangers attacking the validity of their  
11 judgment lien and seeking to avoid it. In ruling on Ahn's motion  
12 for summary judgment, the bankruptcy court determined that the  
13 Sangers' Abstract of Judgment failed to create a valid judgment  
14 lien because it did not contain certain information required under  
15 Cal. Code Civ. Proc. § 674(a). The court denied Ahn's alternative  
16 claim to avoid the lien under § 522(f), finding that such claim  
17 was moot since the court could not avoid a non-existent lien.

18 The bankruptcy court entered a final judgment on Ahn's  
19 adversary complaint on August 21, 2017, after the instant appeal  
20 had been argued and submitted to the BAP. The Sangers have  
21 appealed the bankruptcy court's summary judgment ruling respecting  
22 their lien to the district court.

23 On August 28, 2017, Ahn filed a Notice of Possible or Partial  
24 Mootness, informing the BAP that her appeal of the Contempt Order  
25 may be moot, at least with respect to the bankruptcy court's "in  
26 rem" determination to deny sanctions, based on the court's recent  
27 ruling that the Sangers' judgment lien was void. Ahn conceded  
28 that the court's alternative "covenant-running-with-the-land"

1 ruling against her, however, was not moot since it did not rest on  
2 the lien's validity.

3 We ordered further briefing from the parties on the mootness  
4 issue. Both parties argued that the bankruptcy court's summary  
5 judgment ruling respecting the Sangers' judgment lien did not moot  
6 Ahn's appeal of the Contempt Order.

## 7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
9 and 157(b)(2)(O). We discuss our jurisdiction under 28 U.S.C.  
10 § 158 below.

## 11 **III. ISSUES**

- 12 1. Is the appeal moot?
- 13 2. If the appeal is not moot, did the bankruptcy court err when  
14 it denied the Contempt Motion, determining that the Sangers' post-  
15 discharge actions did not violate the discharge injunction?

## 16 **IV. STANDARDS OF REVIEW**

17 We review de novo our own jurisdiction, including the  
18 question of mootness. Suter v. Goedert, 504 F.3d 982, 985 (9th  
19 Cir. 2007).

20 The bankruptcy court's ruling on a motion for contempt is  
21 reviewed for an abuse of discretion. FTC v. Affordable Media,  
22 179 F.3d 1228, 1239 (9th Cir. 1999). A bankruptcy court abuses  
23 its discretion if it applies the wrong legal standard or its  
24 findings are illogical, implausible or without support in the  
25 record. TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820,  
26 832 (9th Cir. 2011).

27 We may affirm on any ground supported by the record,  
28 regardless of whether the bankruptcy court relied upon, rejected

1 or even considered that ground. Fresno Motors, LLC v. Mercedes  
2 Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014).

### 3 V. DISCUSSION

#### 4 A. The appeal is not moot.

5 We lack jurisdiction over moot appeals. I.R.S. v. Pattullo  
6 (In re Pattullo), 271 F.3d 898, 901 (9th Cir. 2001). Even though  
7 the parties agree that the appeal of the Contempt Order is not  
8 moot, we must address the issue once raised and have an  
9 independent duty to address it sua sponte if not raised. See  
10 Pilate v. Burrell (In re Burrell), 415 F.3d 994, 997 (9th Cir.  
11 2005).

12 Mootness can arise "from Article III of the Constitution" or  
13 "from equity." Rev Op Grp. v. ML Manager LLC (In re Mortgs.  
14 Ltd.), 771 F.3d 1211, 1214 (9th Cir. 2014) (citing Motor Vehicle  
15 Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.),  
16 677 F.3d 869, 880 (9th Cir. 2012)). An appeal is constitutionally  
17 moot if, in the event appellant prevails on the merits, the court  
18 cannot grant "any effective relief" to appellant. Id. (citing  
19 In re Thorpe Insulation Co., 677 F.3d at 880). "An appeal is  
20 equitably moot if the case presents 'transactions that are so  
21 complex or difficult to unwind' that 'debtors, creditors, and  
22 third parties are entitled to rely on [the] final bankruptcy court  
23 order.'" Id. at 1215 (quoting In re Thorpe Insulation Co.,  
24 677 F.3d at 880). "Accordingly, the equitable mootness doctrine  
25 focuses on the reliance and finality concerns of interested  
26 parties in a bankruptcy appeal, whether participating in the  
27 appeal or not." Franklin High Yield Tax-Free Income Fund v. City  
28 of Stockton (In re City of Stockton), 542 B.R. 261, 275 (9th Cir.

1 BAP 2015).

2 We conclude that the appeal of the Contempt Order is neither  
3 constitutionally nor equitably moot. We can still grant Ahn  
4 effective relief in the form of damages should she prevail,  
5 regardless of the bankruptcy court's recent ruling that the  
6 Sangers' judgment lien is void. Nor are we faced with a case  
7 involving transactions that are so complex or difficult to unwind,  
8 such as a substantially consummated plan of reorganization, and no  
9 third parties have relied on the finality of the Contempt Order.  
10 Either the Sangers' actions violated the discharge injunction or  
11 they did not. At best for Ahn, the Sangers would be liable to her  
12 for contempt damages; at worst, Ahn walks away with nothing.  
13 Accordingly, we have jurisdiction over this appeal.

14 **B. The bankruptcy court did not err in determining that the**  
15 **Sangers' post-discharge actions did not violate the discharge**  
16 **injunction.**

17 **1. Governing law for violations of the discharge injunction**

18 Section 524 embodies the "fresh start" concept and provides  
19 that a discharge "operates as an injunction against the  
20 commencement or continuation of an action . . . to collect,  
21 recover or offset any [discharged] debt as a personal liability of  
22 the debtor[.]" § 524(a)(2).

23 A party who knowingly violates the discharge injunction under  
24 § 524(a)(2) can be held in contempt under § 105(a). ZiLOG, Inc.  
25 v. Corning (In re ZiLOG, Inc.), 450 F.3d 996, 1007 (9th Cir.  
26 2006); Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069  
27 (9th Cir. 2002); Emmert v. Taggart (In re Taggart), 548 B.R. 275,  
28 286 (9th Cir. BAP 2016). To be subject to sanctions for violating  
the discharge injunction, a party's violation must be "willful."

1 The party seeking contempt sanctions has the burden of proving, by  
2 clear and convincing evidence, that the alleged contemnor  
3 "(1) knew the discharge injunction was applicable and (2) intended  
4 the actions which violated the injunction." In re ZiLOG, Inc.,  
5 450 F.3d at 1007.

6 Notably, and what is important here, the bankruptcy discharge  
7 "extinguishes only one mode of enforcing a claim – namely, an  
8 action against the debtor in personam – while leaving intact  
9 another – namely, an action against the debtor in rem." Johnson  
10 v. Home State Bank, 501 U.S. 78, 84 (1991).

## 11 **2. Analysis**

12 Ahn raises a variety of arguments for why the bankruptcy  
13 court erred in denying her Contempt Motion. However, they all  
14 rest on the faulty premise that the Sangers' post-judgment  
15 attorney's fees and costs incurred to enforce their lien rights  
16 were debts discharged in her bankruptcy case and that the Sangers'  
17 post-discharge actions to amend the Judgment to include Ahn's  
18 unpaid Shared Mortgage payments and to seek their post-judgment  
19 attorney's fees and costs were acts to collect from her  
20 personally. Ahn is also under the misapprehension that her  
21 obligation to continue to pay her share of the Shared Mortgage  
22 payments was discharged because she was not a signatory to the  
23 bank loan. Ahn is wrong on all counts.

24 The Amended TIC Agreement contained provisions that obligated  
25 Ahn to pay her share of the Shared Mortgage and provided remedies  
26 to the other cotenants if she did not. Ahn's obligations under  
27 that Agreement were not terminated or extinguished as a result of  
28 her discharge, even if the Agreement was deemed a rejected

1 executory contract due to her bankruptcy estate's failure to  
2 assume it. CASC Corp. v. Milner II (In re Locke), 180 B.R. 245,  
3 263 (Bankr. C.D. Cal. 1995) (debtor's rejection of tenancy-in-  
4 common agreement under § 365 did not result in termination or  
5 extinguishment of the covenants, rights, or remedies created by  
6 the agreement or any property interests appurtenant to the  
7 agreement).

8 Even in the absence of the Amended TIC Agreement, California  
9 law allows a cotenant to seek reimbursement from other cotenants  
10 for their proportionate share of the expenses paid that are  
11 necessary for the benefit of the common property. In re Fazzio,  
12 180 B.R. at 269 (citing Willmon v. Koyer, 168 Cal. 369, 372  
13 (1914)); Miller & Starr at § 11.10. Such "necessary" expenses  
14 include sums paid towards a mortgage debt or property taxes.  
15 Willmon, 168 Cal. at 374; Jamison v. Cotton, 136 Cal. App. 127,  
16 130-31 (1933); Miller & Starr at § 11.10. When such payments are  
17 made by one cotenant for the benefit of the property, that  
18 cotenant is entitled to a lien against the interests of those  
19 cotenants who do not contribute their share. In re Fazzio,  
20 180 B.R. at 269; Higgins v. Eva, 204 Cal. 231, 238 (1928); Conley  
21 v. Sharpe, 58 Cal. App. 2d 145, 156 (1943); Miller & Starr at  
22 § 11.10 ("The cotenant who pays the common expenses is entitled to  
23 a lien against the interests of the noncontributing cotenants that  
24 may be enforced by foreclosure against their interests in the  
25 property[.]").

26 Thus, even without the judgment lien which may or may not be  
27 valid depending on the outcome of the Sangers' appeal, the Amended  
28 TIC Agreement and California law provided the Sangers with a lien



1 against Ahn's interest in the Property as a matter of law due to  
2 the Shared Mortgage payments they made, and continue to make, on  
3 her behalf. Even though Ahn's personal liability for the mortgage  
4 payments was discharged, the Sangers still retained a "right to  
5 payment" in the form of their equitable right to foreclose if Ahn  
6 defaulted on her underlying obligation. See Johnson, 501 U.S. at  
7 84. In other words, the Sangers' in rem rights under the Amended  
8 TIC Agreement and California cotenancy law remained unaffected.

9 Therefore, the Sangers' post-discharge actions seeking to  
10 collect the additional Shared Mortgage payments Ahn failed to pay  
11 (plus interest and late fees) and to collect the attorney's fees  
12 they incurred to enforce their lien rights were actions taken to  
13 enforce or preserve their in rem rights; they did not violate the  
14 discharge injunction.<sup>7</sup>

15 As for the payments Ahn made to the Sangers to avoid  
16 foreclosure, they too did not violate the discharge injunction.  
17 Although Ahn contends that the bankruptcy court erred in finding  
18 that these payments were "voluntary," she fails to show how this  
19 finding was clearly erroneous. The payments had only to do with  
20 Ahn's desire to retain the Property. A creditor's mere acceptance  
21 of voluntary payments does not violate the discharge injunction.  
22 Cox v. Zale Del., Inc., 239 F.3d 910, 915-16 (7th Cir. 2001). Ahn

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23  
24 <sup>7</sup> With respect to the Sangers' attorney's fees incurred  
25 postpetition in the state court litigation, we also conclude that  
26 such fees would not be subject to Ahn's discharge, and hence the  
27 discharge injunction, as it was Ahn who "returned to the fray" and  
28 resumed litigation over the Judgment in May 2015, three years  
after the Judgment and nearly a year after her discharge. Only  
then did the Sangers renew their efforts to pursue their post-  
judgment attorney's fees incurred for enforcing the Judgment and  
their lien rights. See Boeing N. Am., Inc. v. Ybarra  
(In re Ybarra), 424 F.3d 1018, 1024-27 (9th Cir. 2005).

